

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DONALD GREEN,

Petitioner,

CASE NO. 08 CV 1803 JLS (BLM)

vs.  
LARRY SMALL, Warden,

Respondent.

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

On September 17, 2008, Petitioner Donald Green filed the present petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On August 14, 2009, pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge Barbara Lynn Major issued a Report and Recommendation (“R&R”) advising that the Court deny the petition. (Doc. No. 21.) On September 21, 2009, Petitioner filed objections, (Doc. No. 24) and, having considered those objections and the R&R, the Court adopted Magistrate Judge Major’s recommendation. (Doc. No. 26.) On March 24, 2010, Petitioner filed a notice of appeal (Doc. No. 28).<sup>1</sup>

A certificate of appealability is authorized “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his

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<sup>1</sup> Petitioner noted that a certificate of appealability is not required to be filed for life prisoners challenging parole denials, but this is incorrect. The Court, however, will interpret the notice of appeal as a request for certificate of appealability.

1 constitutional claims or that jurists could conclude the issues presented are adequate to deserve  
2 encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack*  
3 *v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of appealability  
4 indicating which issues satisfy the required showing or (2) state why a certificate should not issue.  
5 Fed. R. App. P. 22(b).

6 The Petition raised three legal issues, none of which merit certificate of appealability. The  
7 Court finds that reasonable jurists would agree that the California conclusions were neither contrary  
8 to nor an unreasonable application of clearly established federal law. Accordingly, the Court **DENIES**  
9 certificate of appealability in this case.

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12 DATED: April 1, 2010

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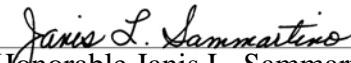
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Honorable Janis L. Sammartino  
United States District Judge